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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 151.

WRIGHT-BLODGETT CO., LTD., APPELLANT,

vs.

THE UNITED STATES, APPELLEE.

**SUPPLEMENTAL BRIEF FOR WRIGHT-BLODGETT
CO., LTD.**

J. BLANC MONROE,
MONTE M. LEMANN,
A. R. MITCHEL,

Solicitors.



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I.

No Concurrent Findings of Two Courts.

We have no desire to combat the principle that this court will not disturb, unless clearly erroneous, the concurrent findings of facts of the two courts below. That principle, however, has no necessary application to the case at bar for the reason that the district court *made no finding of facts* whatever. It is true that it decided the case in favor of the appellant, but whether its judgment was predicated upon

the facts found by the Circuit Court of Appeals or upon other facts does not appear from the record.

It might be said that the district court could not have found any other facts if it desired to decide the case for complainant. Complainant appellee, however, demolishes this argument when he suggests that the entry was fraudulent not only because the entryman failed to reside upon or improve the land (the reason given in the bill and found by the Circuit Court of Appeals), but also because he contracted to alienate the land before receiving his final receipt. If there be ground for this contention by the appellee here, it may well have been the ground upon which the district judge predicated his decision. In that case there would not be concurrent findings of the two courts below, but different findings, which would leave this court entirely untrammeled in its investigation of the question.

Moreover, we contend that each of the findings below would have been clearly erroneous.

II.

The brief of the appellee, pages 14 to 20, which deals with the Hicks case, and which we have no hesitation in saying presents the Government's case as clearly and as favorably as the record will allow, only brings into a stronger light the *variance* between the complainant's *probata* and *allegata*, which was objected to in our original brief. The allegation of the bill is that the Wright-Blodgett Co., Ltd., had knowledge of the fraud through Nat. Wazey and J. M. Boyd. Almost the entire brief of appellee is devoted to showing that that knowledge was acquired through another person, Didaus. As to the Government's right to thus bring its attack over the objection of defendant, see original brief, pp. 16 to 21.

In so far as Wazey is concerned, the witness Hicks, whose testimony is relied on, is quoted by appellee as saying:

"69. Did you ever have any talks with Mr. Wazey regarding this land?

A. *No, sir.*

70. What was Mr. Wazey's occupation?

A. I did not know. I heard afterwards. Every body seemed to know he was buying land for the Wright-Blodgett Co.

71. Do you know where Nat. Wazey lived?

A. No, sir. I can not say that I did. I was never at his residence or his place. I only heard that he lived in the eastern part of the parish.

72. Do you know where the field of Mr. Wazey's activity and occupation for the Wright-Blodgett Co. was?

A. Well principally in the southeastern portion of the parish.

73. In the vicinity of your homestead?

A. My homestead was a little out of the main part of his territory. I think that is where he bought the principal part of land."

The witness then testifies that up to the time of the sale by him to the Wright-Blodgett Co. Wazey was "not very often" in the clerk's office; he then swears:

"Was Wazey ever at your house?

A. *No, sir.*

77. Do you know from any acts or words of his that he was aware of your living there?

A. *I do not.*

78. Do you know whether he was aware that you were clerk of court at Leesville at the time he would file deeds and papers?

A. *Yes, sir."*

From which we suppose the court will be asked to draw that inference that

- a. Wazey filed deeds and papers before the purchase.
- b. That Wazey would presume that the clerk of court lived at the county seat.
- c. That as a matter of fact the court was obliged to live at the county seat.

The record is not silent on these subjects, but it does not lead to the inferences suggested. It reads in part as follows (we quote the testimony of one of complainant's own witnesses) R., p. 68:

"68. How many terms of court do they usually have in the parish of Vernon every year?

A. Why I think that their terms—I do not remember really what number of terms of court they have. I know they have two criminal terms.

Q. Now during the time you have mentioned, 1900 and 1901, did Mr. Hicks have any assistance in the clerk's office?

A. Yes, sir.

Q. Was it necessary for Mr. Hicks to be in his office at all times to keep up with the business of that office?

A. *I do not think it was.*

Q. Is it not a fact that he was frequently absent from the town of Leesville at different times during that time?

A. He was absent on different occasions.

Q. You do not know of your own personal knowledge whether or not Mr. Hicks spent any portion of his time on his homestead?

A. No, sir. I know that he was there with his family on one or two occasions. I do not remember distinctly. I understood he spent part of his time on his homestead.

* * * (Objection by complainant.)

Q. About how many days were they actually holding court during the year in Leesville?

A. The criminal court lasts usually about two weeks.

Q. They hold court twice for a period of two weeks each time?

A. Yes, sir.

Q. And during these terms Mr. Hicks has deputy clerks there?

A. Yes, sir. *In fact during his first term Alfred was equally interested with him in the division of the office and acted as chief deputy.*"

The record shows (R., 67) that his first term began in April, 1900. It also shows that the clerk's office concerns itself with civil terms of court as well as criminal, and that it is open throughout the year as a record office, but it does not show that Hicks was required to be there more than a small proportion of the time. It does affirmatively show that Wazey was never at the Hicks house, and, as far as Hicks knew, did not know where he lived.

Surely this is not such evidence as this court had in mind when it said in the Maxwell Land Grant case, 121 U. S., 381:

"The testimony on which this is done must be clear, unequivocal and convincing and that it cannot be done upon a bare preponderance of evidence which leaves the issue in doubt."

And equally certain it is that if the Circuit Court of Appeals held this evidence to be such evidence as that canon of proof requires that august tribunal's conclusion was clearly erroneous.

Respectfully submitted,

J. BLANC MONROE,
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January, 1915.